Decision ______________

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996.	Application 01-11-045 (Filed November 30, 2001)
In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Verizon California Inc. f/k/a GTE California Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996.	Application 01-12-026 (Filed December 20, 2001)

Cole, Raywid & Braverman, L.L.P, by John C. Dodge, Attorney at Law, for Global NAPs, Inc., applicant.
John W. Bogy, Attorney at Law, for Pacific Bell Telephone Company and Hunton & Williams, by Kelly L. Faglioni, Attorney at Law, for Verizon California Inc., respondents.

OPINION ADOPTING FINAL ARBITRATOR'S REPORT WITH MODIFICATION

1. Summary

We affirm the results adopted in the Final Arbitrator's Report (FAR), with modification, and approve the resulting arbitrated Interconnection Agreements (ICA) between Global NAPs, Inc. (GNAPs) and Pacific Bell Telephone Company (Pacific) and between GNAPs and Verizon California Inc. (Verizon), as modified by this order. Within 30 days of the date of this order, parties shall jointly file and serve signed, complete Interconnection Agreements that conform to the decisions herein. This proceeding is closed.

2. Background

On November 30, 2001, GNAPs filed an application for arbitration of an interconnection agreement with Pacific pursuant to Section 252(b) of the Telecommunications Act of 1996 (Act or TA96). Formal negotiations between the parties commenced on January 19, 2001. As negotiations progressed, Pacific agreed to extend the closing date of the parties' arbitration window, making November 30, 2001 the date the arbitration window closed. Therefore, GNAPs' Petition was timely filed.

GNAPs agreed to negotiate the terms of an ICA based on Pacific's proposed "13-state" ICA. While there was no dispute over the vast majority of terms in the ICA, the parties reached an impasse on 13 key issues. In its petition, GNAPs indicated that it discusses all key unresolved issues in detail, but stated the petition did not identify all of the disputed language in the ICA. GNAPs requested that the Commission resolve the disputed issues on a policy level and affirmatively order the parties to implement contract language embodying this policy decision.

On December 26, 2001, Pacific filed its Response to GNAPs' application. In its Response, Pacific summarized its position on the 13 issues previously raised by GNAPs. Pacific also indicated that GNAPs' proposal that the Commission resolve disputed issues at a policy level is both impractical and contrary to law. Resolution ALJ-181 requires parties to identify the issues for which they request arbitration and propose contractual language to match. In its Response, Pacific presented Pacific's proposed resolution of the 13 issues that were described in the Petition, with Pacific's proposed contractual language.

Similarly, on December 20, 2001, GNAPs filed an application for arbitration of an ICA with Verizon California Inc. f/k/a GTE California Inc. (Verizon) pursuant to Section 252(b) of the Act. GNAPs listed 11 unresolved issues.

Verizon filed a response to GNAPs' petition on January 14, 2002. Verizon responded to the 11 issues GNAPs raised, and added 3 others, for a total of 14 issues. Verizon pointed out, as did Pacific, that GNAPs articulated very narrow issues for arbitration, but proposed significant changes to the ICA, which were not mentioned in the Petition nor supported by testimony.

Conference calls were held on January 7 and January 15, 2002, to discuss the schedule for the case and to address various procedural issues. During the January 7, 2002 conference call, the arbitrator assigned to the proceedings raised the issue of consolidating the two arbitration proceedings since many of the issues to be addressed were common to both. During the January 15, 2002 conference call with GNAPs, Pacific, and Verizon, the arbitrator indicated her intent to consolidate the two arbitration proceedings and revise the hearing schedule.

GNAPs was ordered to make a Supplemental Filing on January 22, 2002. The filing included GNAPs' position on all areas where there was disputed language that was not addressed specifically in GNAPs' initial petitions. GNAPs' Supplemental Filing was not filed with the Commission until January 23, 2002, and it was accompanied by a motion for acceptance of late filed comments. Pacific and Verizon filed their Supplemental Responses on February 1, 2002. An ALJ Ruling was issued on January 22, 2002 formally consolidating the two proceedings and affirming the procedural schedule discussed during the January 15, 2002 conference call.

An arbitration hearing was held on February 11, 2002. Concurrent briefs were filed and served on March 8, 2002. On March 28, 2002, Verizon filed a motion to strike portions of the post-hearing brief of GNAPs relating to Issues 6 (dark fiber) and 9 (performance measures). In its motion, Verizon indicated that parties had settled Issues 6 and 9 prior to the arbitration hearing. At the start of the hearing, the parties informed the arbitrator of their settlement of those issues. The Draft Arbitrator's Report (DAR) was filed on April 8, 2002, disposing of the contested issues as set forth below. Comments on the DAR were filed on April 24, 2002, and the FAR was filed and served on May 15, 2002.

Parties continued their negotiations up until the time of the hearing and resolved some issues in dispute. During the hearing, Pacific reported that only Issues 1-4 were still in dispute. Verizon reported that 12 issues, 1-5, 7-8, and 10-14 were still in dispute. Issues 1-4 are common to both Pacific and Verizon, while issues 5, 7-8, and 10-14 apply only to Verizon.

The most significant issues presented in this arbitration are:

1) Should either party be required to install more than one point of interconnection (POI) per Local Access and Transport Area (LATA)?

2) Should each party be responsible for the costs associated with transporting telecommunications traffic to the single POI?
3) Should the ILECs' local calling area boundaries be imposed on GNAPs or may GNAPs broadly define its own local calling area?
4) Can GNAPs assign to its customers NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer resides?

The GNAPs/Pacific conformed agreement was filed with the Commission on May 22, 2002, and the GNAPs/Verizon conformed agreement, on May 29, 2002. On May 22, 2002 Pacific filed a statement concerning the outcomes in the FAR. GNAPs served its statement on May 24, 2002. Verizon and GNAPs filed statements on May 29, 2002, regarding whether the Commission should adopt or reject the conformed agreement.

On June 13, 2002, GNAPs filed a Supplemental Statement regarding Commission approval or rejection of the ICA conformed to the FAR. GNAPs' Supplemental Statement was accompanied by a motion to accept the Supplemental Statement. GNAPs asks that its statement be accepted in the interest of fairness and due process, since Pacific and Verizon filed substantial, similar statements.

Both Pacific and Verizon filed in opposition to GNAPs' motion on June 20, 2002. Pacific points out that GNAPs had not just an opportunity, but an obligation to file a timely statement regarding the lawfulness of the ICA, but did not comply. The FAR itself directs parties to file such a statement.

Also, Pacific states that GNAPs' Supplemental Statement is a point-by point reply to Pacific's and Verizon's statements. Pacific asserts that GNAPs was given due process and simply did not accept it.

Verizon states that the Supplemental Statement should not be accepted because GNAPs chose to forego its opportunity to comment. According to Verizon, this is hardly unfair or a denial of due process. In fact, Verizon asserts it would be unfair to Verizon and Pacific to allow GNAPs to "respond to Pacific and Verizon's legal memoranda." Verizon views GNAPs' filing as untimely and states that the Commission rules and procedural order never contemplated the opportunity to "respond" to parties' comments as GNAPs now suggests. Rather, the parties were supposed to file concurrent comments. Verizon also adds that GNAPs had the opportunity to file 10-page comments on the DD.

Ordering Paragraph (OP) 1 in the FAR provides clear language on what the parties should file concurrently with the conformed agreement. The parties are ordered to file on the schedule specified in the order:

An entire Interconnection Agreement, for Commission approval, that conforms with the decisions of this Final Arbitrator's Report. A statement which (a) identifies the criteria in the Act and the Commission's Rules (e.g., Rule 4.3.1, Rule 2.18, and 4.2.3 of Resolution ALJ-181), by which the negotiated and arbitrated portions pass or fail those tests; (b) states whether the negotiated and arbitrated portions pass or fail those tests; and (c) states whether or not the Agreement should be approved or rejected by the Commission.

GNAPs failed to provide substantive comments on the conformed ICA in a timely fashion, as required by our rules and should not now be rewarded by allowing it to make what is in essence a rebuttal to the timely filings made by Pacific and Verizon. We will deny GNAPs' motion to accept its Supplemental Comments. GNAPs had the same opportunity as Pacific and Verizon to file comments on this draft decision, so GNAPs' due process rights have not been violated.

3. Negotiated Portions of Agreement

Section 252(e) of the Act provides that we may only reject an agreement (or portions thereof) adopted by negotiation if we find that the agreement (or portions thereof) discriminates against a telecommunications carrier not a party to the agreement, or implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience and necessity. No party or member of the public alleges that any negotiated portion of the agreement should be rejected. We find nothing in any negotiated portion of the agreement which results in discrimination against a telecommunications carrier not a party to the agreement, nor which is inconsistent with the public interest, convenience and necessity.

4. Arbitrated Portions of Agreement

Section 252(e) of the Act, and our Rule 4.2.3, provide that we may only reject an agreement (or any portion thereof) adopted by arbitration if we find that the agreement does not meet the requirements of § 251 of the Act, including the regulations prescribed by the Federal Communications Commission (FCC) pursuant to § 251, or the standards set forth in § 252(d) of the Act.[1]

In statements filed with each conformed agreement, GNAPs states that the conformed agreements should be adopted. However, both Pacific and Verizon dispute various outcomes in the FAR. According to Pacific, the FAR violated or misapplied §§ 251(c)(2), 252(b)(4) and 252(d) of the Act. Verizon asserts that the Commission should reject the interconnection agreement conformed to the FAR, in three areas. These three areas which Verizon claims are contrary to the Act

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[1] Section 251 describes the interconnection standards. Section 252(d) identifies pricing standards.

include (i) the requirements of § 251 of the Act, including the FCC's regulations; (ii) the pricing standards set forth in § 252(d) of the Act; and (iii) the Commission rules, regulations and orders. The Incumbent Local Exchange Carriers (ILECs') concerns relate to Issues 1-4.

The FAR addressed issues 1 and 2 together. Those issues are as follows:

1) Should either party be required to install more than one POI per LATA?
2) Should each party be responsible for the costs associated with transporting telecommunications traffic to the single POI?

Parties do not dispute that GNAPs has the right to install a single POI per LATA. However, in their statements on the conformed agreement, both Pacific and Verizon dispute the FAR's determination on Issue 2.

In making the determination under Issue 2 that GNAPs was not required to pay for any transport on the ILEC's side of the POI, the arbitrator relied on FCC Rule 51.703(b) which states: "[a[LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." However, in its statement on the conformed agreement, Pacific points out that § 703(b) was applied out of context. The FAR does not take Rule 701, which defines the "scope of transport and termination pricing rules" into consideration. According to Pacific, the rules must be read together.
Section 701(a) says:

> The provisions of this subpart apply to reciprocal compensation for transport and termination of telecommunications traffic between LECs and other telecommunications providers.
>
> Section 701(b) reads as follows:
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> "Telecommunications traffic" is "Telecommunications traffic exchanged between a LEC and a telecommunications carrier other

> than a CMRS [Commercial Mobile Radio Service] provider, *except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access.*
> (Emphasis added.)

Pacific asserts that this definition from § 701 means that § 703(b) does not apply in this case for two independent reasons. First, "exchange access" is excepted from the definition of "telecommunications traffic" that is subject to reciprocal compensation, and transport from one of Pacific's calling areas to a different local calling area constitutes exchange access. Second, transport and tandem switching between Pacific's end office and GNAPs' POI is not "from the parties' interconnection point to the terminating carrier's end office switch." On the contrary, it is transport from the originating carrier's switch to the POI. Pacific has agreed to pay reciprocal compensation when GNAPs terminates Pacific-originated calls. However, Pacific is proposing that GNAPs bear a portion of the incremental costs to get to GNAPs' POI. Pacific clarifies that its proposal would not require GNAPs to pay for all transport between the Pacific end office and the POI. GNAPs would pay only when the caller and the POI are situated in different tandem sector areas, and the transport mileage would be discounted by the mileage for a local call in California. (Appendix Network Interconnection Methods, § 2C.)

We concur with Pacific's statement that the arbitrator erred in relying on Rule 51.703(b) without taking Rule 51.701 into account. To understand the full picture regarding reciprocal compensation requirements, Rule 51.703 cannot be viewed in a vacuum; it must be read in conjunction with Rule 51.701. Part of the confusion relating to these provisions centers around the fact that the FCC has changed its definition from its Local Competition Order, which used the term "local" to distinguish the types of calls subject to reciprocal compensation.

However, in its ISP Remand Order, the FCC concluded that a reasonable reading of the Act is that Congress intended to exclude the traffic listed in subsection 251(g) from the reciprocal compensation requirements of subsection 251(b)(5).[2] The FCC states that the statute does not mandate reciprocal compensation for "exchange access, information access, and exchange services for such access" provided to IXCs and information service providers. The FCC acknowledges that it refrains from generically describing traffic as "local" traffic because the term "local" is not a statutorily-defined category, is susceptible to varying meanings, and is not a term used in § 251(b)(5) or § 251(g). (ISP Remand Order, ¶ 34.)

In footnote 65, the FCC provides further guidance on the meaning of the phrase in 251(g), "exchange access, information access, and exchange services for such access." Footnote 65 states:

[2] Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Intercarrier Compensation for ISP-Bound Traffic, CC Docket No 99-68, FCC 01-131 (rel. April 27, 2001) "ISP Remand Order." We note that the ISP Remand Order was again remanded to the FCC by the United States Court of Appeals, D.C. Circuit, in WorldCom Inc v FCC, 288 F.3d 429, Case No. 01-1218, May 3, 2002. Because § 251(g) was worded simply as a transitional device, preserving various local exchange carrier duties that antedated the 1996 Act until such time as the FCC adopted new rules pursuant to the Act, the court found the commission's reliance on § 251(g) was precluded. However, the court acknowledged that there could be other legal bases for adopting the rules chosen by the commission, and did not vacate the commission's order but remanded the case for further proceedings. In its struggles to distinguish the type of traffic covered by the reciprocal compensation provisions of § 251(b)(5), the FCC has made it clear that that provision applies to local traffic, which is the way we have applied the FCC's rules in this arbitration. Therefore, the court's decision does not impact on the determinations we make in this order. However, we recognize that the FCC's order on remand will be covered by the change in law provisions of these ICAs.

> The term "exchange service" as used in section 251(g) is not defined in the Act or in the MFJ [Modified Final Judgment]. Rather, the term "exchange service is used in the MFJ as part of the definition of the term "exchange access," which the MFJ defines as "the provision of exchange services for the purpose of originating or terminating interexchange telecommunications." *United States v. AT&T*, 552 F.Supp. at 228. Thus, the term "exchange service" appears to mean, in context, the provision of services in connection with *interexchange* communications. (<u>ISP Remand Order,</u> footnote 65.)

In terms of this arbitration, this clarification the FCC provided assists us in determining which telecommunications traffic is subject to the reciprocal compensation provisions of § 251(b)(5). While the FCC has moved away from its initial use of the term "local" to differentiate the traffic that is subject to reciprocal compensation, use of the terms "local" and "interexchange" helps us to clarify which traffic is subject to reciprocal compensation.

The FAR relies on the language in FCC Rule 51.703(b) as justification that GNAPs should not have to pay transport and tandem switching for <u>any</u> traffic that GNAPs receives from the ILECs at the single POI it plans to establish for a given LATA. The FAR erroneously relied on Rule 51.703(b) and failed to look at that rule in conjunction with Rule 51.701. Based on the FCC's interpretation of the Act's meaning in § 251(g), we find that interexchange traffic is not subject to the Act's reciprocal compensation requirements. At the same time, § 703(b) forbids the ILEC from assessing any charges to transport "local" traffic which is subject to reciprocal compensation

We interpret the FCC's rules to mean that GNAPs is responsible for compensating the ILECs for terminating intraLATA toll calls (which are interexchange in nature) from GNAPs' customers. At the same time, GNAPs is <u>not</u> responsible for compensating the ILECs for transporting local calls (which are subject to reciprocal compensation) on the ILEC's side of the POI.

The FCC has provided language in various orders that supports the interpretation of its rules that we have made here. The FCC reiterated its position in its Kansas/Oklahoma 271 order as follows:

> In our *SWBT [Southwestern Bell Telephone] Texas Order*, we cited to SWBT's interconnection agreement with MCI-WorldCom to support the proposition that SWBT provided carriers the option of a single point of interconnection. We did not, however, consider the issue of how that choice of interconnection would affect inter-carrier compensation arrangements. Nor did our decision change an incumbent LEC's reciprocal compensation obligations under our current rules. For example, these rules preclude an incumbent LEC from charging carriers for *local traffic* that originates on the incumbent LEC's network.[3]

And in its Intercarrier Compensation NPRM, the FCC states:

> Our current reciprocal compensation rules preclude an ILEC from charging carriers for local traffic that originates on the ILEC's network. These rules also require that an ILEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of such other carrier.[4]

The FCC's language cited above makes it clear that Rule 51.703(b) applies to *local* traffic.

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[3] Memorandum Opinion and Order, In the Matter of Joint Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, FCC 01-29 (Rel. January 22, 2001), ¶235 (footnotes omitted, emphasis added), "Kansas/Oklahoma 271 Order."

[4] Notice of Proposed Rulemaking, In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, FCC 01-032 (Rel. April 27, 2001), ¶ 112.

In its Comments on the Draft Decision (DD), GNAPs reiterates its argument that toll traffic is only "exchange access" traffic when a separate toll charge is imposed on the customer. According to GNAPs, since it proposes a LATA-wide local calling area, calls between exchanges within the LATA would be not subject to toll charges. As a consequence, GNAPs believes that traffic is not exchange access traffic.

As we stated above, the calling areas adopted by the Commission govern whether a call is local or an intraLATA toll call. There is a difference between the retail service offering that GNAPs provides to its customers, e.g., LATA-wide local calling, and the wholesale obligations between carriers. In this instance, we are using the Commission-adopted calling area paradigm to determine whether calls are rated as local or intraLATA toll. Since that is the case, GNAPs' argument that this would not be "exchange access" traffic does not have merit. Any call rated as an intraLATA toll call under the Commission's established calling areas would constitute exchange access traffic, not local traffic.

Once we distill this issue down to this easily understandable difference in traffic, we need to evaluate the parties' positions to see whether the ICA language is consistent with our determination. In the following section, we provide broad policy guidance on the issues discussed. The specific contract language we adopt, to the extent that it differs from that adopted in the FAR, is addressed in Appendix A.

First, we examine Pacific's proposed language in Appendix NIM [Network Interconnection Methods], § 2-A, 2-B and 2-C. In § 2-A, Pacific states: "For calls that originate and terminate to end users physically located in the local exchange where the POI is located, both Carrier and Company shall only be financially responsible for the facilities, trunking and equipment on its side of the POI."

That language does not conform to the FCC's rule that carriers are responsible for transport on their side of the POI of <u>all</u> calls that would be classified as "local." For example, there could be two neighbors within the LATA, but distant from the POI. If one is a customer of the ILEC, and the other is a customer of GNAPs, and they call each other, those calls would be classified as local, regardless of the fact that the call itself had to be transported from Caller A, to the POI, and then back out to Caller B. Pacific's language in 2-C would allow the company to charge transport for that call, just because the POI is located outside of the local exchange where the call originates and terminates. That outcome violates the FCC's rules, and will not be allowed. The call would be classified as local, and GNAPs may not be assessed transport charges on the ILEC's side of the POI.

Next we examine Verizon's use of the Interconnection Point or IP for determining where financial responsibility is passed from one carrier to another. As cited in the Draft Arbitrator's Report, Verizon's witnesses Kathryn Allison and Don Albert provide a succinct definition of the difference between the POI and the IP in Verizon's proposal:

> A POI is where the ILEC and CLEC physically interconnect their respective networks. This is the place where the carriers' wires physically meet. An IP is the place in the network at which one local exchange carrier hands over financial responsibility for traffic to another local exchange carrier. A POI and an IP may be at the same place but do not have to be. Pursuant to Verizon's proposal, Verizon is financially responsible for delivering its traffic to GNAPs' IP. Once Verizon delivers traffic originating on its network to

GNAPs' IP, then GNAPs is financially responsible for transporting the traffic to its customer.[5]

We find Verizon's IP concept to be problematic. There is no indication that there is any relationship between the IPs, and the local calling area. The IPs represent points at which financial responsibility for the traffic passes from one carrier to the other. Therefore, the IPs could be locations that would require GNAPs to pay transport charges for calls that would be rated as local calls. That violates the FCC's § 703(b) that states that the ILEC may not assess charges for such traffic.

Verizon cites the FCC's <u>Pennsylvania 271 Order</u> to demonstrate that its proposal to allocate financial responsibility for transporting traffic to GNAPs' distant POI complies with federal requirements. According to Verizon, the FCC rejected the claim that Verizon's proposal to allocate financial responsibility for interconnection on Verizon's side of the POI violates federal requirements:

> Although several commenters assert that Verizon does not permit interconnection at a single point per LATA, we conclude that Verizon's policies do not represent a violation of our existing rules. Verizon states that it does not restrict the ability of competitors to choose a single point of interconnection per LATA because it permits carriers to physically interconnect at a single point of interconnection (POI). Verizon acknowledges that its policies distinguish between the physical POI and the point at which Verizon and an interconnecting competitive LEC are responsible for the cost of interconnection facilities. The issue of allocation of financial responsibility for interconnection facilities is an open issue in our *Intercarrier Compensation NPRM*. We find, therefore, that

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[5] Exhibit 5, Direct Testimony of Kathryn Allison and Don Albert on Behalf of Verizon at 6.

> Verizon complies with the clear requirement of our rules, i.e., that incumbent LECs provide for a single physical point of interconnection per LATA. Because the issue is open in our *Intercarrier Compensation NPRM*, we cannot find that Verizon's policies in regard to the financial responsibility for interconnection facilities fail to comply with its obligations under the Act.[6]

The FCC stresses that Verizon complies with its "clear requirement" that ILECs provide for a single POI per LATA. However, it is not at all clear from the FCC's language that it is endorsing Verizon's IPs, since that specific issue is included in its Intercarrier Compensation NPRM. We are reminded that this decision is in a 271 proceeding, not in a rulemaking, and peripheral issues are not addressed in the same way as they would be in a rulemaking. The FCC does not state that Verizon's IP proposal is in compliance with the Act. It simply says that it cannot find that Verizon's policies for financial responsibility fail to comply with its obligations under the Act.

The FCC has indicated in the past that its 271 proceedings are limited in scope. In its statement on the conformed agreement, Pacific cites a portion of the FCC's Louisiana/Georgia 271 Order, as follows:

> [As] the Commission stated in prior section 271 orders, while the Commission will consider, in a section 271 proceeding, whether a BOC [Bell Operating Company] permits a requesting LEC to physically interconnect at a single Point of Interconnection (POI), it will not attempt to settle new and unresolved disputes about the precise content of an incumbent LEC's obligations to its competitors

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[6] Memorandum Opinion and Order, In the Matter of Application of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, and Verizon Select Services for Authorization to Provide in-Region Services in Pennsylvania, CC Docket No. 01-138, FCC No. 01-269 (re. Sep. 19, 2001) ¶ 100 (footnotes omitted) "Pennsylvania 271 Order."

– disputes that do not involve per se violations of self-executing requirements of the Act.[7]

We believe that the issue of Verizon's IPs is more in the nature of "new and unresolved disputes" that the FCC does not address specifically in its 271 Orders.

However, regardless of the FCC's intent in its Pennsylvania 271 Order, it is of limited value in our arbitration proceeding in California. There could well be factual differences between the Pennsylvania 271 proceeding and our arbitration proceeding. For instance, the local calling areas in Pennsylvania may be different from those in California, so the relationship between local calling areas and IPs may differ between the two states. In other words, we do not place the same reliance that Verizon does on what the FCC concluded in its Pennsylvania 271 Order. We make our determination on the FCC's Rule 703(b) which is currently in effect, and will govern the outcome in this arbitration. We note that the issue of whether the ILECs should be compensated for *local* traffic on the ILEC's side of the POI is currently before the FCC in the Intercarrier Compensation NPRM. The outcome of the FCC's decision in that docket will be incorporated into the ICAs under the applicable change in law provisions.

In its Statement, Pacific asserts that the FCC has *never* said *anywhere* that its rules mean an ILEC must pay for the transport necessary to reach a Competitive Local Exchange Carrier (CLEC) point of interconnection in a distant local calling

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[7] Memorandum Opinion and Order, In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region Services in Georgia and Louisiana, CC Docket No. 02-35, FCC 02-147 (released May 15, 2002, "Louisiana/Georgia 271 Order," ¶208 and 816.

area. Pacific cites the Pennsylvania 271 Order as proof that the FCC specifically does not mean that.

However, we dispute Pacific's conclusion. We respond that the FCC has never said anywhere that its rules mean an ILEC does not have to pay for transport necessary to reach a CLEC POI in a distant local calling area. The FCC's Kansas/Oklahoma 271 Order Paragraph 235 supports our position:

> Finally, we caution SWBT [Southwestern Bell Telephone] from taking what appears to be an expansive and out of context interpretation of findings we made in our *SWBT Texas Order* concerning its obligation to deliver traffic to a competitive LEC's point of interconnection. In our *SWBT Texas Order*, we cited to SWBT's interconnection agreement with MCI-WorldCom to support the proposition that SWBT provided carriers the option of a single point of interconnection. *We did not, however, consider the issue of how that choice of interconnection would affect inter-carrier compensation arrangements. Nor did our decision to allow a single point of interconnection change an incumbent LEC's reciprocal compensation obligations under our current rules. For example, these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network.* These rules also require that an incumbent LEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of such other carrier.[8]

The FCC does not provide any sort of exclusion for local traffic that must travel across the ILEC's network. The key element is that the traffic is local in

[8] Memorandum Opinion and Order, In the Matter of Joint Application by SBC Communications Inc., Southwest Bell Telephone "Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwest Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, FCC 01-29 (rel. January 22, 2001), ¶ 235, "Kansas/Oklahoma 271 Order." (Footnotes omitted, emphasis added.)

nature, and in that case Rule 51.703(b) applies. Pacific turns the FCC's rule on its head when it states that the rule has to specifically include local traffic that is transported across the ILEC's network to the single POI. We disagree. Since the FCC does not exclude any type of local traffic from its Rule 51.703(b), there are no exclusions. We acknowledge that the FCC is looking at this specific issue in its <u>Intercarrier Compensation NPRM</u>, but until the FCC completes its rulemaking, the current rule applies. It is clear from the FCC's language in the <u>Kansas/Oklahoma 271 order</u> that the FCC is well aware that the single POI raises issues relating to inter-carrier compensation arrangements.

Pacific cites 113 from the <u>Intercarrier Compensation NPRM</u>, in support of its view that there is currently no Federal regulation concerning which carrier should bear the cost of transport to the POI, and under what circumstances an interconnecting carrier should be able to recover from the other carrier the costs of transport from the POI to the switch serving its end user. Pacific asserts that the FCC would not have had to ask the questions that it did if its current rules on this issue were clear. We disagree with Pacific's interpretation. A more logical interpretation is that the FCC is examining the issue, in light of new information, to determine the necessity of amending its current rule to provide compensation to the ILECs for transporting traffic to the POI. The current rule was adopted, without taking the concept of a single POI into account, and in its <u>Intercarrier Compensation NPRM</u>, the FCC is taking the opportunity to revisit its rule, in light of some CLECs' intention to establish a single POI per LATA.

In its Comments, Pac-West states that the DD requires terminating carriers to pay access charges to the originating carrier when a terminating carrier's single POI in a LATA is in a different local calling area than the originating calling area, irrespective of the eventual termination point of the call. That misstates the outcome of our order. The physical route a call takes between its origination and termination points has no bearing on whether the call is local or toll. In order to determine if a particular call is local or toll, the rating points of the calling and called numbers are compared to determine if the call is deemed for billing purposes to be originating and terminating in the same local calling area (a local call) or in different local calling areas with rating points more than 16 miles apart (a toll call). Even though the call is passed from one carrier to the other at the POI, we do not count the POI as the termination point for the call. Rather, the rating point of the called party determines the eventual termination point of the call.

Pac-West and O1 point out that the terminating carrier would always charge the originating carrier switched access. Pac-West states that this makes sense because the originating carrier collects all of the revenue paid by the customer for the toll call, and therefore compensates the terminating carrier via the access charge process for its termination of the call. We clarify that it is our intention to require that the originating carrier pay access charges in the form of transport and tandem switching, if applicable, to the terminating carrier for carrying intraLATA traffic across the terminating carrier's network to the called party.

The Draft Arbitrator's Report required GNAPs to pay the ILECs for transporting and terminating traffic from GNAPs' customers, but at Total Element Long Run Incremental Costs (TELRIC) rates. We do not believe that TELRIC rates are appropriate in this case where we are clearly dealing with what are defined as intraLATA toll calls. Carriers traditionally pay access charges to other carriers who complete their customers' intraLATA calls, and there is no reason that GNAPs should be treated any differently for the intraLATA phone calls its customers make.

Pacific made its proposal for the use of TELRIC pricing for transport and tandem switching on its side of the POI, based on the intention of applying that to certain types of local traffic. We have determined that it is not appropriate for Pacific to charge GNAPs for transport of local traffic on Pacific's side of the POI. Pacific did not, however, intend to apply TELRIC pricing to intraLATA traffic.

In their Statements, both Pacific and Verizon indicate that when a CLEC designates a single POI in a LATA, the ILECs are entitled under this Commission's decisions to receive compensation at TELRIC rates for transporting traffic to a single POI outside of the local calling area. The ILECs traced this requirement to Decision (D.) 99-09-029, in which the Commission determined that all carriers should be "reasonably compensated for use of their networks."[9] We remind the ILECs that D.99-09-029 addressed the VNXX issue, not the single POI issue, so they have taken the statement out of context. As we state below, we are relying on D.99-09-029 to resolve the VNXX issue.

Both Verizon and Pacific dispute the outcome in the FAR on Issue 2 on policy grounds as well. Verizon asserts that there is no valid legal or policy basis to support the ICA's abolition of intraLATA access charges for GNAPs. According to Verizon, either by precedent or through adoption under § 252(i), it will result in the end of intraLATA access charges for all CLECs. If the ICA is approved by the Commission, there is effectively no longer a category of

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[9] Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, Decision (D.)99-09-029 (rel. Sept. 2, 1999) "D.99-09-029."

intraLATA access traffic for CLECs in California. Verizon claims that not only is this illegal, it is bad policy.

Verizon states that it does not dispute the provision in the ICA that allows GNAPs to select the geographic calling area it will offer to its retail end-users for a flat, monthly rate. The ICA, however, also allows GNAPs to use this self-selected geographic area to determine whether GNAPs should pay Verizon reciprocal compensation or access charges to terminate its traffic. This should not be permitted because it would abolish access charges.

Verizon asserts that the ICA contravenes Commission precedent establishing statewide uniform calling zones. The FCC looks to the states to determine what geographic areas should be considered a "local area" for purposes of applying reciprocal compensation obligations under § 251(b)(5) of the Act. This Commission's historical practice is to define all calls routed over 16 miles as toll calls.[10] In order to be consistent with its practice of defining local service areas, Verizon states the Commission must adhere to its uniform, statewide design for local calling areas for intercarrier compensation purposes. Federal law allows the Commission to change how it defines local calling zones, but the Commission has not done so. Verizon asserts that to be consistent with state and federal law, Verizon's calling areas must be used as the basis for the parties' intercarrier compensation obligations.

Pacific echoes the same concerns expressed by Verizon, stating that when the LATA boundaries fall, GNAPs looks forward to designating just one POI in every state in which SBC can lawfully provide interLATA service. Pacific claims

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[10] Verizon cites D.90-06-011 and D.90-11-058, addressing the expansion of the local calling scope and creation of Zone Usage Measurement (ZUM).

that eventually GNAPs intends to have just one POI per region. If GNAPs' proposal is adopted, instead of competing with low monthly rates for exchange access, GNAPs will have a perverse incentive to offer a bundle of local and long distance calling at a high fixed rate, not because it truly reflects the costs incurred but because GNAPs can avoid paying for any transport or any access charges that way. Pacific criticizes the FAR for not challenging any of the economic reasons for requiring GNAPs to pay the additional costs it causes.

We support the ILECs' policy arguments relating to Issue 2. It is not our intent in this arbitration to disrupt the local and intraLATA calling paradigm adopted by this Commission. And we have no intention of making a decision in an arbitration proceeding that would have the net result of abolishing intraLATA calling. For calls that are intraLATA in nature, e.g., those beyond 16 miles, traditional access charges will apply.

The second area that Pacific and Verizon dispute relates to Issues 3 and 4. The FAR addressed issues 3 and 4 together. Those issues are as follows:

3) Should the ILECs' local calling area boundaries be imposed on GNAPs, or may GNAPs broadly define its own local calling areas?

4) Can GNAPs assign to its customers NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer resides?

In resolving Issue 3, the FAR determined that GNAPs can define the local calling area boundaries for its own customers, and we concur with that determination. Issue 4 includes three major sub-parts:

- May GNAPs establish disparate rating and routing points for its customers?

- Is that VNXX[11] traffic subject to reciprocal compensation provisions?

- Should GNAPs pay access charges or TELRIC-based transport charges for transporting such traffic across the ILEC's network?

The FAR found that GNAPs may establish disparate rating and routing points for its customers. However, the FAR includes the caveat that GNAPs must ensure that NXX codes are associated with a particular rate center to identify the jurisdictional nature of the traffic for intercarrier compensation purposes, and we concur with that outcome. This is consistent with our determination in D.99-09-029, in which we addressed the issue of VNXX codes and determined that a carrier may set disparate rating and routing points. The FCC has not addressed this particular issue in its rules, although the issue is to be addressed in the FCC's <u>Intercarrier Compensation NPRM.</u> This outcome allows the CLEC to make more effective use of its unique network topology, while ensuring that calls are rated properly.

The FAR also determined that VNXX traffic is subject to reciprocal compensation obligations. This is consistent with our finding in D.99-09-029 that such traffic should be treated as local calls:

> We conclude that the assigning of NXX prefixes of ISPs in the manner used by Pac-West constitutes a form of foreign exchange service from the perspective of the end user. As such, the Pac-West arrangement warrants rating of the calls from the rate center of the foreign exchange in similar fashion to more traditional forms of

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[11] VNXX (Virtual NXX) traffic is traffic where the NXX (central office codes) are used to provide locally-rated calling to customers who physically reside beyond the local calling area of the designated NXX code.

> foreign exchange service. Accordingly, such calls would be rated as local calls if originated from a rate center within 12 miles of the rate center of the designated foreign exchange of the called party's NXX prefix. This principle is consistent with the underlying intent of the tariffs governing the rating of calls as toll or local, applied in the context of foreign exchange service.[12]

Since these calls are rated as local calls, they should be subject to reciprocal compensation requirements. This is consistent with our treatment of the ILECs' tariffed FX service.

The FAR also determined that GNAPs is not required to compensate Pacific and Verizon for use of the ILECs' transport and tandem switching networks to carry the FX-type traffic. The FAR found that GNAPs could not be assessed intrastate access charges or transport and tandem switching at TELRIC prices under the dictates of FCC Rule 703(b), which does not allow the ILEC to charge for transport on its side of the POI. The FAR relied on § 703(b), and the 115 in the FCC's Intercarrier Compensation NPRM, in support of that conclusion.

We do not agree with the FAR's outcome on this issue. First, the FCC has said very little about VNXX traffic, although the issue is up for comment in the Intercarrier Compensation NPRM. It is not appropriate to rely on Rule 51.703(b) to say that GNAPs should not be required to pay for transporting traffic across the ILECs' networks to turn the resulting calls into local calls. We view this more in the nature of traditional tariffed FX service, where the customer obtains a local presence in a different community, but the customer pays to transport those calls from the central office which actually serves the customer to the central office where the customer wants to establish a calling presence. FX customers do not

[12] D.99-09-029 at 25.

get the service at no charge, and we believe that the ILECs should be compensated for routing the traffic to a different rate center.

This finding is consistent with D.99-09-029, in which we made the following determination on the specific issue of intercarrier compensation in cases of disparate rating and routing:

> We conclude that all carriers are entitled to be fairly compensated for the use of their facilities and related functions performed to deliver calls to their destination, irrespective of how a call is rated based on its NXX prefix. Thus, it is the actual routing points of the call, the volume of traffic, the location of the point of interconnection, and the terms of the interconnection agreement—not the rating point—of a call which properly forms a basis for considering what compensation between carriers may be due.[13]

In that decision, we also concluded that we did not have sufficient record to adopt specific intercarrier compensation arrangements for the transport and delivery of traffic involving different rating and routing points. We did determine, however, that existing tariffed switched access rates, such as those charged by the ILEC to other carriers for the transport of intraLATA toll traffic, did not necessarily provide a fair or economically efficient basis for intercarrier compensation under this type of FX arrangement. (D.99-09-029 at 32.) Until such time that the Commission had an opportunity to revisit the issue, carriers were told that they should resolve the issue through interconnection agreements negotiated in conformance with the Act. This issue is before us in this arbitration proceeding because parties to this arbitration were unable to agree on the proper treatment of these FX-type calls.

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[13] D.99-09-029, September 2, 1999, at 35.

In its Comments, O1 claims that VNXX traffic is not included in the "carve-out" provisions of § 251(g), so it must be subject to FCC Rule 51.703(b). GNAPs makes a similar argument stating that because the decision declares that VNXX traffic is local traffic, and Rule 703(b) forbids the ILECs from assessing any charges to transport "local" traffic, GNAPs cannot be required to pay the ILECs to transport that VNXX traffic.

We disagree with this viewpoint. VNXX calls would be intraLATA toll calls if GNAPs did not specify a different rate center for the calls than the rate center where the customer is physically located. These VNXX calls would be intraLATA calls, not local calls, if tied to the rate center that serves the customer. By allowing disparate rating and routing, we are allowing for those calls to become local calls, and as such, subject to reciprocal compensation. However, GNAPs is required to pay the additional transport required to get those calls to where they will be considered local calls. As stated above, this is similar to the concept of the ILECs' tariffed FX service, in which the customer pays for the privilege of receiving dialtone from a different exchange. Because these calls would be intraLATA toll calls, if they were rated out of the rate center which actually provides service to the customer, they are not subject to the provisions of Rule 703(b).

On an interim basis, until further action by this Commission or by the FCC in its Intercarrier Compensation NPRM, we will require GNAPs to pay the ILECs for use of their networks at TELRIC prices. We adopt TELRIC pricing in lieu of switched access charges because we believe that TELRIC prices provide adequate compensation to the ILECs for use of their network. Switched access rates are higher than Unbundled Network Element prices based on the TELRIC methodology and, as such, will help to encourage competitors to make use of VNXX traffic and make creative service offerings to their customers.

In its comments on the DD, Verizon indicates that GNAPs should not be permitted to use Verizon's network to provide toll-free interexchange calling to Verizon customers and then charge Verizon reciprocal compensation for that privilege. This should be especially true when GNAPs use of virtual NXX codes relieves Verizon's end-users from paying toll. We remind Verizon that they are receiving compensation for those VNXX calls. The ILECs are being compensated at TELRIC prices for transporting those VNXX calls for GNAPs.

It appears that the ILECs both support the use of TELRIC pricing for transport of GNAPs' VNXX traffic. In its Statement, Verizon states:

> …the DAR [Draft Arbitrator's Report] correctly recognized that 'ILECs are entitled to fair compensation for the use of their facilities in the transport of FX traffic.' The DAR required GNAPs to compensate Verizon at TELRIC rates for use of Verizon's network to carry the virtual NXX traffic to GNAPs' POI. This result was consistent with the result ordered in the AT&T/Pacific Bell arbitration.[14]

In its Statement, Pacific includes the following:

> D.99-09-029 is clear that 'reasonable compensation' must be paid. What D.99-09-029 did <u>not</u> decide is what the '*proper* compensation arrangement' should be – access charges, TELRIC, or some other 'reasonable' amount. See Conclusions of Law 10 and 11 of that decision. Pac-West's implicit suggestion that what D.99-09-029 meant by 'reasonable compensation' is *zero* compensation is absurd.

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[14] Statement of Verizon California Inc. Regarding Commission Approval or Rejection of the Interconnection Agreement Conformed to the Final Arbitrator's Report, May 29, 2002, at 13-14.

> The Commission was within its rights to order for the time being, that 'reasonable compensation' could be based on TELRIC. Other State commissions faced with the same question have ordered compensation at access rates.[15]

Pac-West explains that the routing point of a given telephone number in the Local Exchange Routing Guide (LERG) tells all carriers where to deliver calls to or from that number. All ILECs and CLECs specify routing points for their telephone numbers. To the extent the routing point is associated with a specific place on a carrier's network, it will have different V&H coordinates than the rating point of the telephone numbers associated with the rating and routing point. Therefore, Pac-West concludes there will be disparate rating and routing points for almost all (if not all) telephone numbers, even those served by ILECs.

Regardless of how a call is routed to a particular customer, that customer is associated with a particular rating point, generally based on the central office that provides dialtone to that customer. Under a system of disparate rating and routing, that customer would be rated as though it were served out of a different central office.

In its Comments on the DD, GNAPs states that in the ISP Remand Order, the FCC determined that intercarrier compensation for ISP-bound traffic is solely within the jurisdiction of the FCC and that on a going-forward basis, state commissions have been preempted from addressing the issue. GNAPs states that intercarrier compensation for ISP-bound traffic is not an appropriate subject for ICAs. GNAPs neglects to mention that the parties—Pacific, Verizon and

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[15] Statement of Pacific Bell Telephone Company Regarding Whether the Interconnection Agreement Resulting from this Proceeding Should be Approved or Rejected by the Commission, May 22, 2002, fn. 3.

GNAPs—all addressed the issue of ISP-bound traffic in their ICAs. In fact, the parties agreed to the language relating to ISP traffic, and that particular issue is not before us in this arbitration. In the Pacific/GNAPs' ICA, Appendix Reciprocal Compensation, § 5.1 includes language that was agreed to by both Pacific and GNAPs that states local traffic to ISPs will be compensated the same as other local traffic:

> Until and unless ILEC chooses to invoke the FCC's pricing plan as ordered in FCC 01-131, the compensation set forth below will also apply to all Local and Local ISP Calls as defined in section 3.2 of this Appendix….

Further, the parties also recognized and agreed that ISP and Internet-bound traffic could also be traded outside of the applicable local calling area. IntraLATA Interexchange Traffic was one example of this type of traffic. Further, § 6.2 contains the following language negotiated by the parties: "To the extent such "nonLocal" ISP calls are placed, the Parties agree that section 5 above does not apply, and that the Agreement's rates, terms and conditions for IntraLATA and/or InterLATA calling shall apply…." In other words, the parties themselves have negotiated the language relating to compensation for ISP-bound traffic.

The issue is handled differently in the Verizon ICA. Verizon has adopted the FCC's pricing plan outlined in the ISP Remand Order, and the ICA includes the following language, which was negotiated by the parties:

> 7.3.2 Reciprocal Compensation shall not apply to Internet Traffic
>
> 7.3.2 The determination of whether traffic is Reciprocal Compensation Traffic or Internet Traffic shall be performed in accordance with the FCC Internet Order and then current Applicable Law.

To summarize, in both ICAs, the parties have negotiated and agreed to language relating to compensation for ISP-traffic. The Commission is not being asked to resolve issues relating to ISP-bound traffic. We note that our decision refers to calls as "local" or "intraLATA," and does not refer to ISP-bound calls so we are not in violation of the ISP Remand Order.

We recognize that both the FCC and this Commission have open dockets which deal with the issue of how to treat VNXX traffic. Any decisions issued by this Commission or the FCC will be covered by the change in law provisions of the ICAs we are adopting here.

In its comments on the conformed interconnection agreement, Verizon encouraged us to reject the ICA because it was not compliant with the Act. With the changes we have made to the FAR, and to the conformed interconnection agreements, in this decision, we believe that the arbitrated portions of the ICAs are in compliance with the Act and the FCC's rules and should be adopted.

5. Preservation of Authority

Section 252(e)(3) of the Act provides that nothing shall prohibit a state Commission from establishing or enforcing other requirements of state law in its review of an agreement, including compliance with intrastate telecommunications service quality standards. Our Rules 4.2.3 and 4.3.1 provide that we may also reject agreements or portions thereof, which violate other requirements of the Commission, including but not limited to, quality of service standards. Other than the matters addressed and disposed of above, no party or member of the public identifies any clause in the ICA that potentially conflicts with any state law, or requirement of the Commission, including service quality standards, and we are aware of none.

6. Filing the Conformed ICA

Within 30 days of the date of this decision, parties shall file and serve entire ICAs which conform with the decisions herein. Parties should also serve a copy on the Director of the Telecommunications Division. Parties should sign the conformed ICAs before they are filed so that they may become effective without additional delay. The signed ICAs should become effective on the date filed.

7. Waiver of Period for Public Review and Comment

The Public Utilities Code and our Rules of Practice and Procedure generally require that draft decisions be circulated to the public for review and comment 30 days prior to the Commission's vote.[16] On the other hand, the Act requires that the Commission reach its decisions to approve or reject an arbitrated agreement within 30 days after submission by the parties.[17] This establishes a conflict.

However, Rule 77.7(f)(5) provides that we may reduce or waive the period for public review and comment "for a decision under the state arbitration provisions of the Telecommunications Act of 1996." We consider and adopt this decision today under the state arbitration provisions of the Act.

Under Rule 77.7(f)(5), we are not required to provide this Draft Decision for public review and comment. However, since we made some changes from the FAR, we chose to send the Draft Decision to the parties so that parties could

[16] See Pub. Util. Code § 311(g)(1), and Rule 77.7 of the Commission's Rules of Practice and Procedure.

[17] 47 U.S.C. Section 252(e)(4).

be given an opportunity to comment on the changes from the FAR. The Draft Decision was mailed and e-mailed to parties on June 13, 2002, and comments were filed on June 20, 2002. Comments were filed by GNAPs, Verizon, Pacific, Pac-West Telecomm, Inc. (Pac-West), and O1 Communications, Inc. (O1). We have taken the comments into account, as appropriate, in finalizing this order.

Findings of Fact

1. No party or member of the public alleges that any negotiated portion of the ICA must be rejected.

2. No negotiated portion of the ICA results in discrimination against a telecommunications carrier not a party to the ICA; is inconsistent with the public interest, convenience and necessity; or does not meet other Commission rules, regulations, and orders, including service quality standards.

3. No arbitrated portion of the ICA, as modified by this decision, fails to meet the requirements of § 251 of the Act, including FCC regulations pursuant to § 251, or the standards of § 252(d) of the Act.

4. Interexchange traffic is not subject to the Act's reciprocal compensation requirements.

5. Rule 51.703(b) forbids the ILECs from assessing any charges to transport "local" traffic which is subject to reciprocal compensation provisions.

6. GNAPs is responsible for compensating the ILECs for terminating intraLATA toll calls from GNAPs' customers.

7. GNAPs is not responsible for compensating the ILECs for transporting local calls on the ILECs' side of the POI.

8. The calling areas adopted by the Commission govern whether a call is local or an intraLata toll call.

9. The physical route a call takes between its origination and termination points has no bearing on whether the call is local or toll.

10. The rating points of the calling and called numbers are compared to determine whether the call is local or toll.

11. VNXX traffic is local traffic and is subject to reciprocal compensation requirements.

12. A carrier may set disparate rating and routing points.

13. TELRIC pricing adequately compensates the ILECs for use of their networks.

14. No provision of the ICA conflicts with State law, including compliance with telecommunications service quality standards, or requirements of the Commission.

15. The Act requires that the Commission approve or reject an arbitrated ICA within 30 days after the agreement is filed (47 U.S.C. § 252(e)(4)), which in this case is within 30 days of the date statements in compliance with the FAR were filed.

16. A draft decision must be subjected to 30 days' public review and comment prior to the Commission's vote; however Rule 77.7(f)(5) provides that the Commission may reduce or waive the period for public review and comment under Pub. Util. Code § 311(g)(1) for a decision under the state arbitration provisions of the Act.

17. This is a proceeding under the state arbitration provisions of the Act.

Conclusions of Law

1. The FAR and the ICAs between GNAPs and Pacific and between GNAPs and Verizon, which conform to the decisions in the FAR, as modified by this order, should be approved.

2. 47 C.F.R. § 51.703(b) must be read in conjunction with § 51.701.

3. The ILECs should receive compensation for costs associated with the use of their networks for the transmission of traffic with disparate rating and routing points.

4. GNAPs/Pacific and GNAPs/Verizon should jointly file and serve within 30 days of the date of this order signed ICAs which conform with the decisions herein.

5. The conformed, signed ICAs should be effective when filed.

6. The 30-day public review and comment period should be reduced pursuant to Pub. Util. Code § 311(g)(3) and Rule 77.7(f)(5).

7. This order should be effective today because it is in the public interest to implement national telecommunications policy as accomplished through the ICAs which result from the decisions in the FAR and this order as soon as possible.

O R D E R

IT IS ORDERED that:

1. We affirm the results reached in the May 15, 2002, Final Arbitrator's Report (FAR), as modified by this order and, pursuant to the Telecommunications Act of 1996, and Resolution ALJ-181, we approve the Interconnection Agreements (ICA) between Global NAPs, Inc (GNAPs) and Pacific Bell Telephone Company and between GNAPs and Verizon California Inc. (Verizon), as modified by this order, that result therefrom.

2. Within 30 days of the date of this order, parties shall sign and jointly file and serve entire ICAs that conform with the decisions in the FAR, as modified by this order. The signed ICAs shall become effective on the date filed.

3. GNAPs' January 23, 2002, motion for acceptance of its late-filed Supplemental Information is granted.

4. Verizon's March 28, 2002, motion to strike portions of the post-hearing brief of GNAPs is granted.

5. GNAPs' June 13, 2002, motion for acceptance of its Supplemental Statement is denied.

6. This proceeding is closed.

This order is effective today.

Dated _____________, at San Francisco, California.

Appendix A

The following section disposes of all disputed contract language in the ICA between GNAPs and Pacific, which must be changed to conform to the outcomes in this decision:

- T&C § 1.1.3: Pacific's definition of "Access Compensation" shall be included in the ICA. It states that parties pay access compensation for originating or terminating intraLATA calls.
- T&C § 1.1.40: Pacific's proposed language is adopted. An "Exchange Area" is established and defined by the Commission.
- T&C § 1.1.56: GNAPs' proposed definition of "Foreign Exchange" is adopted, with modification. Pacific's definition would limit Foreign Exchange (FX) to the FX service purchased from a carrier's tariff. On the other hand, GNAPs' definition includes FX-like services, such as VNXX calls. VNXX calls are FX-like, and those within a particular LATA are to be treated as local calls for reciprocal compensation purposes. However, the interLATA FX service GNAPs lists as part of its definition would not be considered local in nature, and those calls are interLATA toll calls and would not be subject to reciprocal compensation provisions.
- T&C § 1.1.68: Pacific's proposed definition of "IntraLATA Toll Traffic" is adopted. Any traffic between the parties which is outside the "normal" local calling areas adopted by the Commission is considered intraLATA toll traffic, and that traffic is subject to access charges.
- T&C § 1.1.76: Pacific's definition of "Local Calls" is adopted, with modification. Local calls do not have to originate and terminate to customers physically located within the same local calling area. We have already determined that VNXX calls would be included within the definition of a local call, and in that case, the customers will not be physically located within the same local calling area.
- T&C § 1.1.83: Pacific's definition of "Meet Point Billing" is adopted. It describes the process to follow in a multi-bill environment.
- T&C § 1.2.8: Pacific's proposed language is adopted. Pacific allows for disparate routing and rating points within the same LATA, but makes it clear that the routing point is used to calculate mileage measurements for the distance-sensitive transport element. This is consistent with the Commission's determination in D.99-09-029. GNAPs' language would

allow the routing point to be anywhere in SBC's territory and goes beyond a simple definition of the term "routing point."

- Reciprocal Compensation § 6.2: Pacific's proposed language is adopted. It reflects the fact that when an end-user customer places a "non-local" call to an ISP, the call will be rated according to the terminating carrier's Exchange Access tariffs.
- NIM §§ 2-A, 2-B, 2-C: Sections 2-A, 2-B, and 2-C govern financial responsibility for calls transported within the same calling area as the POI and between different calling areas within the LATA. Pacific's proposed language is rejected. It is inconsistent with the determination that GNAPs cannot be required to pay for transport of local traffic on Pacific's side of the POI.

The following section disposes of all disputed contract language in the ICA between GNAPs and Verizon submitted to the Commission on May 29, 2002, which must be changed to conform to the outcomes in this decision:

- T&C Glossary § 2.56: Verizon's proposed definition for "Measured Internet Traffic" is adopted. Verizon's definition includes a reference to its local calling area.
- T&C Glossary § 2.75: Verizon's proposed language is adopted, with modification. The designation of traffic between the parties will be based on Verizon's local calling areas, which have been adopted by the Commission. Reciprocal compensation does apply to Foreign Exchange (FX)-type traffic that does not originate and terminate within the same Verizon local calling area. An FX-type call is rated as a local call, and reciprocal compensation should apply. Section 2.75 shall include GNAPs' language relating to changes in applicable law.
- T&C Glossary § 2.91: Verizon's proposed definition of "Toll Traffic" is adopted. It is more precise, and eliminates GNAPs' requirement that toll traffic relate to whether or not the carrier imposes a toll charge.
- Interconnection § 2.1.1: GNAPs' proposed language is adopted with modification. GNAPs is entitled to have only one POI per LATA. However, GNAPs' final sentence is problematic because it states that each party is responsible for transporting "telecommunications traffic" originating on its network to the POI at its own cost. The two parties dispute the meaning of the term "telecommunications traffic," and the term is not defined in the ICA. Therefore, the parties shall add a sentence to clarify that "telecommunications

traffic" includes local traffic subject to reciprocal compensation provisions, but does not include "intraLATA traffic."

- Interconnection § 2.1.2: GNAPs' proposed language, which describes the relationship between the POI and Verizon's IPs, is adopted. GNAPs indicates that the IP will be located at the POI. This is appropriate since financial responsibility for reciprocal compensation traffic (which would be local traffic) passes from one carrier to the other at the POI.
- Interconnection § 6.2: Verizon's proposed language is adopted. It explains the use of Traffic Factors and deletes GNAPs' language related to its defined calling areas. The reference to applicable tariffs is appropriate. That tariff section explains the measurement of billing minutes for toll traffic.
- Interconnection § 7.2: GNAPs' proposed language is adopted. GNAPs will not be subject to additional charges for Verizon's transport of those calls which are subject to reciprocal compensation to the POI.
- Interconnection § 9.2.1: In its comments on the DD, Verizon indicates that Verizon's language is necessary to ensure proper routing – not rating—of traffic exchanged between GNAPs and interexchange carriers interconnected at a Verizon tandem. Verizon's language is adopted.

(End of Appendix A)